

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION

THIS DOCUMENT RELATES TO:

The City of New York, et. al.

v.

Abbott Laboratories, et al.

)
) MDL NO. 1456
) Civil Action No. 01-12257-PBS
)
)
) Judge Patti B. Saris
)
) **September 3, 2008 Status Report**
) **on Behalf of the City of New York**
) **and New York Counties**
)
)

The undersigned counsel for the Captioned-plaintiffs (hereinafter referred to as “The City of New York and Captioned New York Counties”) hereby submit the attached Status Report for September 3, 2008, in accordance with the Court’s June 17, 2004 Procedural Order.

Date: September 3, 2008
New York, New York

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September 3, 2008 Status Report for the City of New York and Captioned New York Counties

Regarding Motions to Dismiss

1. On July 30, 2008 the Court issued a series of rulings on individual defendants' motions to dismiss the First Amended Consolidated Complaint.
 - The Court ruled that the following motions are moot or no longer pending: Docket #2203 (Par Pharmaceuticals), Docket #2205 (Mylan Pharmaceuticals), Docket #2210 (Biogen Idec Inc.), Docket #4388 (Barr and Ivax), Docket #2191 (Forest Laboratories), and Docket #2208 (Merck & Co.).
 - The Court entered rulings with respect to the following defendants' motions: Docket #5465 (Pfizer), Docket #5466 (Novartis), Docket #5467 (Tap Pharmaceuticals), Docket #5468 (EMD, Inc.), Docket #5469 (Endo Pharmaceuticals, Inc.), Docket #5470 (Eli Lilly and Company), Docket #5471 (Bayer), Docket #5472 (Roche), Docket #5473 (Purdue Pharma LP), Docket #5474 (Chiron Corporation), Docket #5475 (Amgen); Docket #5476 (Boehringer Ingelheim Pharmaceuticals Inc.); Docket #5477 (MedImmune, Inc.); Docket #5478 (AztraZeneca Pharmaceuticals LP).
2. On August 13, 2008, the New York Counties filed Plaintiffs' Motion for Reconsideration of July 30, 2008 Orders Regarding Certain Defendants' Individual Motions to Dismiss. (Docket # 5498)
3. Defendants filed their opposition to Plaintiffs' Motion for Reconsideration of July 30, 2008 Orders, as follows.
 - On August 22, 2008, defendant Chiron Corporation filed a memorandum in Opposition To Plaintiffs' Motion For Reconsideration Of The July 30, 2008 Orders Regarding Certain Defendants' Individual Motions To Dismiss (Docket #5509); defendant Novartis Pharmaceuticals Corporation filed a Response To Plaintiffs' Motion For Reconsideration Of July 30, 2008 Orders Regarding Certain Defendants' Individual Motions To Dismiss (Docket #5510); defendants Amgen, Bayer, Hoffman-LaRoche, MedImmune, and Roche filed a Joint Opposition To Plaintiffs' Motion For Reconsideration Of July 30, 2008 Orders Dismissing Claims Related To Physician-Administered Drugs (Docket # 5512); and defendant Agouron filed its Response To Plaintiffs' Motion For Reconsideration Of July 30, 2008 Orders Regarding Certain Defendants' Individual Motions To Dismiss (Docket #5513).
 - On August 25, 2008, defendant Eli Lilly filed its Opposition to Motion for

Reconsideration of July 30, 2008 Order Dismissing, in Part, Claims against Eli Lilly (Docket #5516).

4. In response to plaintiffs' motion for reconsideration, on August 27, 2008 the Court issued a "Procedural Order re Motion to Reconsider" (Docket #5521). In that Procedural Order the Court wrote that "[u]nfortunately, the Court based its [July 31, 2008 orders] on the "corrected Exhibit B to the Complaint rather than the "revised" Exhibit B, filed after the hearing." The Court also directed that "the parties shall meet and confer in good faith regarding points of agreement as to which drugs were adequately pled on the 'revised' Exhibit B of the Revised First Amended Consolidated Complaint."

Regarding Discovery Motions

Magistrate Judge Bowler issued the following rulings on August 20, 2008:

Order (Docket #4991) denying without prejudice Plaintiffs' Motion to Compel Production from Boehringer Ingelheim Roxane Laboratories, Inc., ("Boehringer-Roxane"), concerning discovery for NDCs reimbursed on the basis of both AWP and FUL. Magistrate Judge Bowler ordered plaintiffs to produce a list of the Boehringer-Roxane drugs reimbursed based on both AWP and FUL and to identify the allegedly fraudulent spreads associated with each reimbursement basis. Plaintiffs presently will do so.

Order (Docket #5027) granting Plaintiffs' Motion to Compel Discovery and Data on all NDCs associated with the Designated FUL Drugs.

Order (Docket #5052) granting in part Defendants' Motion to Compel Commissioner of New York State Department of Health and Three Key Witnesses to Comply with Subpoenas, to the extent set forth on the record in open court, after the "meet and confer".

Order (Docket #5092) withdrawing without prejudice Defendants' Motion to Compel Production of Claims Data.

Order (Docket #5296) granting Schering Corporation's Motion for Protective Order. Plaintiffs presently will file objections in connection with this ruling.

FUL Expert Report

On August 22, 2008 Judge Saris issued an Order granting Plaintiffs' Emergency Motion for Extension of Time to September 30, 2008 to File Plaintiffs' Expert Reports Relating to the Designated FUL Drugs. (Docket #5507)

Related Orders

On August 27, 2008, Magistrate Judge Bowler issued an Order stipulating that the time period for defendant Serono, Inc. to respond to the Revised First Amended Complaint of New York State and Consolidated Counties is extended to October 31, 2008. (Docket #5504)

On August 29, 2008, Magistrate Judge Bowler issued an Order stipulating that the time period for defendant Endo Pharmaceuticals, Inc. to respond to the Revised First Amended Complaint of New York State and Consolidated Counties is extended to September 29, 2008. (Docket #5524)

Certificate of Service

I certify that on September 3, 2008 a true and correct copy of the foregoing September 3, 2008 Status Report was served on all Counsel of Record by electronic service pursuant to Case Management Order No. 2 by sending a copy to Lexis Nexis File and Serve for posting and notification to all parties.

/s/Aaron D. Hovan
Aaron D. Hovan